

# CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

MAY 30 2003

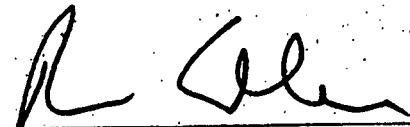
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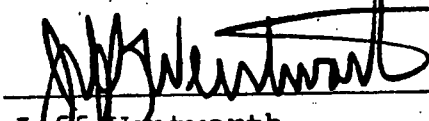
Honorable David Dewhurst  
President of the Senate

Honorable Tom Craddick  
Speaker of the House of Representatives

Sirs:

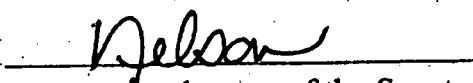
We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on SB 277 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.


  
Rodney Ellis, Chair

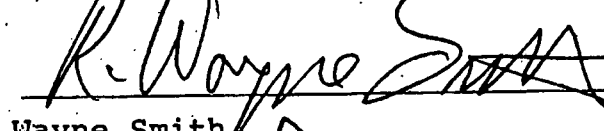
  
Jeff Wentworth

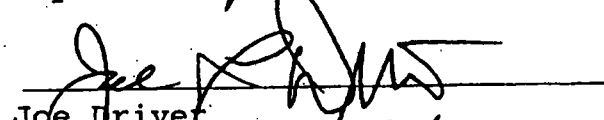
  
Eliot Shapleigh

  
Bill Ratliff


  
On the part of the Senate  
Jane Nelson

  
Warren Chisum, Chair

  
Wayne Smith

  
Joe Driver

  
Mike "Tuffy" Hamilton

  
On the part of the House  
Al Edwards

## Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

# CONFERENCE COMMITTEE REPORT

3<sup>rd</sup> Printing

S.B. No. 277

A BILL TO BE ENTITLED

AN ACT

relating to the continuation and functions of the Texas Board of Professional Engineers and to the regulation of the practice of engineering.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (e), Section 1001.004, Occupations Code, is amended to read as follows:

(e) This chapter does not:

(1) prevent a person from identifying the person in the name and trade of any engineers' labor organization with which the person is affiliated;

(2) prohibit or otherwise restrict a person from giving testimony or preparing an exhibit or document for the sole purpose of being placed in evidence before an administrative or judicial tribunal, subject to the board's disciplinary powers under Subchapter J regarding negligence, incompetency, or misconduct in the practice of engineering;

(3) repeal or amend a law affecting or regulating a licensed state land surveyor; or

(4) affect or prevent the practice of any other legally recognized profession by a member of the profession who is licensed by the state or under the state's authority.

SECTION 2. Sections 1001.005 and 1001.051, Occupations Code, are amended to read as follows:

1           Sec. 1001.005. APPLICATION OF SUNSET ACT. The Texas Board  
2 of Professional Engineers is subject to Chapter 325, Government  
3 Code (Texas Sunset Act). Unless continued in existence as provided  
4 by that chapter, the board is abolished and this chapter expires  
5 September 1, 2015 [~~2003~~].

6           Sec. 1001.051. LIMITATION ON EXEMPTION. An exemption under  
7 this subchapter applies only to a person who does not offer [~~is not~~  
8 ~~directly or indirectly represented~~] to the public to perform [~~be~~  
9 ~~legally qualified to engage in the practice of~~] engineering  
10 services.

11           SECTION 3. Section 1001.057, Occupations Code, is amended  
12 to read as follows:

13           Sec. 1001.057. EMPLOYEE OF PRIVATE CORPORATION OR BUSINESS  
14 ENTITY [~~OR AFFILIATE~~]. (a) This chapter shall not be construed to  
15 apply to the activities of a private corporation or other business  
16 entity, or the activities of the full-time employees or other  
17 personnel under the direct supervision and control of the business  
18 entity, on or in connection with [~~A regular full-time employee of a~~  
19 ~~private business entity is exempt from the licensing requirements~~  
20 ~~of this chapter if~~]:

21           (1) reasonable modifications to existing buildings,  
22 facilities, or other fixtures to real property not accessible to  
23 the general public and which are owned, leased, or otherwise  
24 occupied by the entity [~~the employee performs services exclusively~~  
25 ~~for the business entity or an affiliate of that entity~~]; or

26           (2) activities related only to the research,  
27 development, design, fabrication, production, assembly,

1 integration, or service of products manufactured by the entity ~~[the~~  
2 ~~employee's services.~~

3 ~~[(A) are on or in connection with property.~~

4 ~~[(i) owned or leased by the business entity~~  
5 ~~or affiliate, or~~

6 ~~[(ii) in which the business entity or~~  
7 ~~affiliate has an interest, estate, or possessory right, or~~

8 ~~[(B) affect exclusively the property, products,~~  
9 ~~or interests of the business entity or affiliate, and~~

10 ~~[(3) the employee does not have the final authority to~~  
11 ~~approve, or the ultimate responsibility for, engineering designs,~~  
12 ~~plans, or specifications relating to the property or products that~~  
13 ~~are to be.~~

14 ~~[(A) incorporated into a fixed work, system, or~~  
15 ~~facility on the property of another, or~~

16 ~~[(B) made available to the public].~~

17 (b) ~~[This exemption includes the use of a job title or~~  
18 ~~personnel classification by the employee if the employee does not~~  
19 ~~use.~~

20 ~~[(1) the title or classification in connection with an~~  
21 ~~offer to the public to perform engineering services, and~~

22 ~~[(2) a name, title, or word that tends to convey the~~  
23 ~~impression that a person not licensed under this chapter is~~  
24 ~~offering to the public to perform engineering services.~~

25 ~~[(e)]~~ A person who claims an exemption under this section  
26 and who is determined to have directly or indirectly represented  
27 the person as legally qualified to engage in the practice of

1 engineering or who is determined to have violated Section 1001.301  
2 may not claim an exemption until the 10th anniversary of the date  
3 the person made that representation.

4 (c) This exemption does not prohibit:

5 (1) a licensed professional engineer who intends to  
6 incorporate manufactured products into a fixed work, system, or  
7 facility that is being designed by the licensee on public property  
8 or the property of others from requiring the manufacturer to have  
9 plans or specifications signed and sealed by a licensed  
10 professional engineer; or

11 (2) the board from requiring, by rule, that certain  
12 manufactured products delivered to or used by the public must be  
13 designed and sealed by a licensed professional engineer, if  
14 necessary to protect the public health, safety, and welfare.

15 (d) For purposes of this section, "products manufactured by  
16 the entity" also includes computer software, firmware, hardware,  
17 semiconductor devices, and the production, exploration, and  
18 transportation of oil and gas and related products.

19 SECTION 4. Subsections (b) and (c), Section 1001.058,  
20 Occupations Code, are amended to read as follows:

21 (b) ~~[This exemption includes the use of a job title or~~  
22 ~~personnel classification by the employee if the employee does not~~  
23 ~~use+~~

24 ~~[(1) the title or classification in connection with an~~  
25 ~~offer to the public to perform engineering services, and~~

26 ~~[(2) a name, title, or word that tends to convey the~~  
27 ~~impression that a person not licensed under this chapter is~~

~~offering to the public to perform engineering services.~~

[~~(e)~~] A person who claims an exemption under this section and who is determined to have directly or indirectly represented the person as legally qualified to engage in the practice of engineering or who is determined to have violated Section 1001.301 may not claim an exemption until the 10th anniversary of the date the person made that representation.

SECTION 5. Subchapter B, Chapter 1001, Occupations Code, is amended by adding Section 1001.066 to read as follows:

Sec. 1001.066. CERTAIN NASA-RELATED ACTIVITIES. This chapter does not:

(1) apply to a business entity or the business entity's employees to the extent that the entity's products or services consist of space vehicles or space services provided to, or space technology transfer programs required by, the National Aeronautics and Space Administration; or

(2) prohibit the use of the term "engineer" or "engineering" in a job title or personnel classification by an employee described by Subdivision (1) to the extent that the use of the title or classification is related to activities described by that subdivision.

SECTION 6. Subsection (b), Section 1001.101, Occupations Code, is amended to read as follows:

(b) Appointments to the board shall be made without regard to the race, color, disability [~~creed~~], sex, religion, age, or national origin of the appointee.

SECTION 7. Subsection (a), Section 1001.102, Occupations

Code, is amended to read as follows:

(a) A person may not be ~~[is not eligible for appointment as]~~  
a public member of the board if the person or the person's spouse:

(1) is registered, certified, or licensed by a ~~[an~~  
~~occupational]~~ regulatory agency in the field of engineering;

(2) is employed by or participates in the management  
of a ~~[an agency or]~~ business entity or other organization regulated  
by or receiving money from the board ~~[related to the field of~~  
~~engineering];~~ ~~[or]~~

(3) owns or controls, directly or indirectly, more  
than a 10 percent ~~[has a financial]~~ interest ~~[other than as a~~  
~~consumer]~~ in a business entity or other organization regulated by  
or receiving money from the board; or

(4) uses or receives a substantial amount of tangible  
goods, services, or money from the board other than compensation or  
reimbursement authorized by law for board membership, attendance,  
or expenses ~~[related to the field of engineering].~~

SECTION 8. Section 1001.103, Occupations Code, is amended  
to read as follows:

Sec. 1001.103. MEMBERSHIP AND EMPLOYEE RESTRICTIONS.

(a) In this section, "Texas trade association" means a cooperative  
and voluntarily joined statewide association of business or  
professional competitors in this state designed to assist its  
members and its industry or profession in dealing with mutual  
business or professional problems and in promoting their common  
interest.

(a-1) A person may not be a [A] member ~~[or employee]~~ of the

1 board and may not be a board employee employed in a "bona fide  
2 executive, administrative, or professional capacity," as that  
3 phrase is used for purposes of establishing an exemption to the  
4 overtime provisions of the federal Fair Labor Standards Act of 1938  
5 (29 U.S.C. Section 201 et seq.), and its subsequent amendments, if:

6 (1) the person is an officer, employee, or paid  
7 consultant of a Texas trade association in the field of engineering  
8 [~~industry~~]; or

9 (2) the person's spouse [~~related within the second~~  
10 ~~degree by affinity or consanguinity, as determined under Chapter~~  
11 ~~573, Government Code, to a person who~~] is an officer, manager  
12 [~~employee~~], or paid consultant of a Texas trade association in the  
13 field of engineering [~~industry~~].

14 (b) A person may not be [~~serve as~~] a member of the board or  
15 act as the general counsel to the board if the person is required to  
16 register as a lobbyist under Chapter 305, Government Code, because  
17 of the person's activities for compensation on behalf of a  
18 profession related to the operation of the board.

19 SECTION 9. Section 1001.106, Occupations Code, is amended  
20 by amending Subsection (a) and adding Subsection (c) to read as  
21 follows:

22 (a) It is a ground for removal from the board that a member:

23 (1) does not have at the time of taking office  
24 [~~appointment~~] the qualifications required by Sections 1001.101 and  
25 [~~Section~~] 1001.102;

26 (2) does not maintain during service on the board the  
27 qualifications required by Sections 1001.101 and [~~Section~~]



1 1001.102;

2 (3) is ineligible for membership under Section  
3 1001.102 or ~~[violates a prohibition established by Section]~~  
4 1001.103; [or]

5 (4) cannot, because of illness or disability,  
6 discharge the member's duties for a substantial part of the member's  
7 term; or

8 (5) is absent from more than half of the regularly  
9 scheduled board meetings that the member is eligible to attend  
10 during ~~[held in]~~ a calendar year without an excuse approved by a  
11 majority vote of the board~~[, excluding meetings held while the~~  
12 ~~person was not a member]~~.

13 (c) If the executive director has knowledge that a potential  
14 ground for removal exists, the executive director shall notify the  
15 presiding officer of the board of the potential ground. The  
16 presiding officer shall then notify the governor and the attorney  
17 general that a potential ground for removal exists. If the  
18 potential ground for removal involves the presiding officer, the  
19 executive director shall notify the next highest ranking officer of  
20 the board, who shall then notify the governor and the attorney  
21 general that a potential ground for removal exists.

22 SECTION 10. Section 1001.108, Occupations Code, is amended  
23 to read as follows:

24 Sec. 1001.108. OFFICERS. The governor shall designate a  
25 member of the board as the presiding officer of the board to serve  
26 in that capacity at the will of the governor. The board shall elect  
27 annually from its members ~~[a presiding officer,]~~ an assistant

1 presiding officer[7] and a secretary.

2 SECTION 11. Subchapter C, Chapter 1001, Occupations Code,  
3 is amended by adding Section 1001.112 to read as follows:

4 Sec. 1001.112. TRAINING. (a) A person who is appointed to  
5 and qualifies for office as a member of the board may not vote,  
6 deliberate, or be counted as a member in attendance at a meeting of  
7 the board until the person completes a training program that  
8 complies with this section.

9 (b) The training program must provide the person with  
10 information regarding:

11 (1) this chapter;

12 (2) the programs operated by the board;

13 (3) the role and functions of the board;

14 (4) the rules of the board, with an emphasis on the  
15 rules that relate to disciplinary and investigatory authority;

16 (5) the current budget for the board;

17 (6) the results of the most recent formal audit of the  
18 board;

19 (7) the requirements of:

20 (A) the open meetings law, Chapter 551,  
21 Government Code;

22 (B) the public information law, Chapter 552,  
23 Government Code;

24 (C) the administrative procedure law, Chapter  
25 2001, Government Code; and

26 (D) other laws relating to public officials,  
27 including conflict-of-interest laws; and

1           (8) any applicable ethics policies adopted by the  
2 board or the Texas Ethics Commission.

3           (c) A person appointed to the board is entitled to  
4 reimbursement, as provided by the General Appropriations Act, for  
5 the travel expenses incurred in attending the training program  
6 regardless of whether the attendance at the program occurs before  
7 or after the person qualifies for office.

8           SECTION 12. Subchapter D, Chapter 1001, Occupations Code,  
9 is amended by adding Sections 1001.153 through 1001.156 to read as  
10 follows:

11           Sec. 1001.153. DIVISION OF RESPONSIBILITIES. The board  
12 shall develop and implement policies that clearly separate the  
13 policy-making responsibilities of the board and the management  
14 responsibilities of the executive director and the staff of the  
15 board.

16           Sec. 1001.154. QUALIFICATIONS AND STANDARDS OF CONDUCT  
17 INFORMATION. The executive director or the executive director's  
18 designee shall provide to members of the board and to board  
19 employees, as often as necessary, information regarding the  
20 requirements for office or employment under this chapter, including  
21 information regarding a person's responsibilities under applicable  
22 laws relating to standards of conduct for state officers or  
23 employees.

24           Sec. 1001.155. EQUAL EMPLOYMENT OPPORTUNITY POLICY;  
25 REPORT. (a) The executive director or the executive director's  
26 designee shall prepare and maintain a written policy statement that  
27 implements a program of equal employment opportunity to ensure that

1 all personnel decisions are made without regard to race, color,  
2 disability, sex, religion, age, or national origin.

3 (b) The policy statement must include:

4 (1) personnel policies, including policies relating  
5 to recruitment, evaluation, selection, training, and promotion of  
6 personnel, that show the intent of the board to avoid the unlawful  
7 employment practices described by Chapter 21, Labor Code; and

8 (2) an analysis of the extent to which the composition  
9 of the board's personnel is in accordance with state and federal law  
10 and a description of reasonable methods to achieve compliance with  
11 state and federal law.

12 (c) The policy statement must:

13 (1) be updated annually;

14 (2) be reviewed by the Commission on Human Rights for  
15 compliance with Subsection (b)(1); and

16 (3) be filed with the governor's office.

17 Sec. 1001.156. INFORMATION ON STATE EMPLOYEE INCENTIVE  
18 PROGRAM. The executive director or the executive director's  
19 designee shall provide to board employees information and training  
20 on the benefits and methods of participation in the state employee  
21 incentive program under Subchapter B, Chapter 2108, Government  
22 Code.

23 SECTION 13. Section 1001.203, Occupations Code, is amended  
24 to read as follows:

25 Sec. 1001.203. RULES RESTRICTING ADVERTISING OR  
26 COMPETITIVE BIDDING. (a) The board by rule shall prescribe  
27 standards for compliance with Subchapter A, Chapter 2254,

1 Government Code ~~[may restrict competitive bidding]~~.

2 (b) Except as provided by Subsection (a), the ~~[The]~~ board  
3 may not adopt rules ~~[a rule]~~ restricting advertising or competitive  
4 bidding by a license holder ~~[person licensed under this chapter]~~  
5 except to prohibit false, misleading, or deceptive practices ~~[by~~  
6 ~~the person]~~.

7 (c) In its rules to prohibit false, misleading, or deceptive  
8 practices, the ~~[The]~~ board may not include ~~[in its rules to prohibit~~  
9 ~~false, misleading, or deceptive practices]~~ a rule that:

10 (1) restricts the ~~[person's]~~ use of any medium for  
11 advertising;

12 (2) restricts the use of a license holder's ~~[person's]~~  
13 personal appearance or ~~[use of the person's]~~ voice in an  
14 advertisement;

15 (3) relates to the size or duration of an  
16 advertisement by the license holder ~~[person]~~; or

17 (4) restricts the license holder's ~~[person's]~~  
18 advertisement under a trade name.

19 SECTION 14. Subchapter E, Chapter 1001, Occupations Code,  
20 is amended by adding Section 1001.2035 to read as follows:

21 Sec. 1001.2035. RULES ON CONSEQUENCES OF CRIMINAL  
22 CONVICTION. The board shall adopt rules and guidelines as  
23 necessary to comply with Chapter 53.

24 SECTION 15. Subsection (a), Section 1001.204, Occupations  
25 Code, is amended to read as follows:

26 (a) The board shall establish the following ~~[reasonable and~~  
27 ~~necessary]~~ fees in amounts reasonable and necessary to cover the

costs of administering [~~for the administration of~~] this chapter [~~in amounts not to exceed~~]:

- (1) license fee; [~~.....\$50~~]
- (2) annual renewal fee; [~~.....\$75~~]
- (3) reciprocal license fee; [~~.....\$50~~]
- (4) duplicate license fee; [~~.....\$5~~]
- (5) engineer-in-training certificate fee; [~~.....\$15~~]
- (6) roster of engineers fee; [~~.....\$10~~]
- (7) examination fee; [~~.....\$200~~]
- (8) registration fee for engineering firm; and
- (9) inactive status fee. [~~.....\$100~~]

SECTION 16. Subsection (c), Section 1001.206, Occupations Code, is amended to read as follows:

(c) The fee increase imposed by Subsection (a) does not apply to an engineer who:

- (1) meets the qualifications for an exemption under Section 1001.057 or 1001.058 but does not claim that exemption; [~~or~~]
- (2) is disabled as described by Section 1001.205; or
- (3) is on inactive status as provided by Section 1001.355.

SECTION 17. Section 1001.210, Occupations Code, is amended to read as follows:

Sec. 1001.210. CONTINUING EDUCATION PROGRAMS. (a) The board shall [~~may~~] recognize, prepare, or administer continuing education programs for its license holders. A license holder must participate in the programs to the extent required by the board to

1 keep the person's license.

2 (b) The board may not require a license holder to obtain  
3 more than 15 hours of continuing education annually. The board  
4 shall permit a license holder to certify at the time the license is  
5 renewed that the license holder has complied with the board's  
6 continuing education requirements.

7 (c) The board shall permit a license holder to receive  
8 continuing education credit for educational, technical, ethical,  
9 or professional management activities related to the practice of  
10 engineering, including:

11 (1) successfully completing or auditing a course  
12 sponsored by an institution of higher education;

13 (2) successfully completing a course certified by a  
14 professional or trade organization;

15 (3) attending a seminar, tutorial, short course,  
16 correspondence course, videotaped course, or televised course;

17 (4) participating in an in-house course sponsored by a  
18 corporation or other business entity;

19 (5) teaching a course described by Subdivisions  
20 (1)-(4);

21 (6) publishing an article, paper, or book on the  
22 practice of engineering;

23 (7) making or attending a presentation at a meeting of  
24 a technical or engineering management society or organization or  
25 writing a paper presented at such a meeting;

26 (8) participating in the activities of a professional  
27 society or association, including serving on a committee of the

1 organization; and

2 (9) engaging in self-directed study.

3 (d) A license holder may not receive more than five  
4 continuing education credit hours annually for engaging in  
5 self-directed study ~~[persons regulated by the board under this~~  
6 ~~chapter. Participation in the programs is voluntary].~~

7 SECTION 18. Subchapter E, Chapter 1001, Occupations Code,  
8 is amended by adding Sections 1001.214, 1001.215, and 1001.216 to  
9 read as follows:

10 Sec. 1001.214. TECHNOLOGY POLICY. The board shall develop  
11 and implement a policy requiring the executive director and board  
12 employees to research and propose appropriate technological  
13 solutions to improve the board's ability to perform its functions.  
14 The technological solutions must:

15 (1) ensure that the public is able to find information  
16 about the board on the Internet;

17 (2) ensure that persons who want to use the board's  
18 services are able to:

19 (A) interact with the board through the Internet;  
20 and

21 (B) access any service that can be provided  
22 effectively through the Internet; and

23 (3) be cost-effective and developed through the  
24 board's planning processes.

25 Sec. 1001.215. NEGOTIATED RULEMAKING AND ALTERNATIVE  
26 DISPUTE RESOLUTION POLICY. (a) The board shall develop and  
27 implement a policy to encourage the use of:



1           (1) negotiated rulemaking procedures under Chapter  
2   2008, Government Code, for the adoption of board rules; and

3           (2) appropriate alternative dispute resolution  
4   procedures under Chapter 2009, Government Code, to assist in the  
5   resolution of internal and external disputes under the board's  
6   jurisdiction.

7           (b) The board's procedures relating to alternative dispute  
8   resolution must conform, to the extent possible, to any model  
9   guidelines issued by the State Office of Administrative Hearings  
10   for the use of alternative dispute resolution by state agencies.

11           (c) The board shall designate a trained person to:

12           (1) coordinate the implementation of the policy  
13   adopted under Subsection (a);

14           (2) serve as a resource for any training needed to  
15   implement the procedures for negotiated rulemaking or alternative  
16   dispute resolution; and

17           (3) collect data concerning the effectiveness of those  
18   procedures, as implemented by the board.

19           Sec. 1001.216. JOINT ADVISORY COMMITTEE ON THE PRACTICE OF  
20   ENGINEERING AND ARCHITECTURE. (a) The Joint Advisory Committee on  
21   the Practice of Engineering and Architecture is an advisory  
22   committee to the board and to the Texas Board of Architectural  
23   Examiners. The advisory committee consists of:

24           (1) three members of the board and one practicing  
25   architectural engineer appointed by the board; and

26           (2) three members of the Texas Board of Architectural  
27   Examiners and one practicing architect appointed by that board.

1        (b) Members of the advisory committee serve staggered  
2 six-year terms with the terms of one or two members appointed by the  
3 board and one or two members appointed by the Texas Board of  
4 Architectural Examiners expiring each odd-numbered year.

5        (c) The advisory committee shall meet at least twice a year.

6        (d) The advisory committee shall work to resolve issues that  
7 result from the overlap between activities that constitute the  
8 practice of engineering and those that constitute the practice of  
9 architecture. The advisory committee shall assist each agency in  
10 protecting the public rather than advancing the interests of either  
11 agency or the profession it regulates.

12        (e) The advisory committee shall issue advisory opinions to  
13 the board and to the Texas Board of Architectural Examiners on  
14 matters relating to the practice of engineering and the practice of  
15 architecture, including:

16                (1) opinions on whether certain activities constitute  
17 the practice of engineering or the practice of architecture;

18                (2) specific disciplinary proceedings initiated by  
19 either agency; and

20                (3) the need for persons working on particular  
21 projects to be licensed by the board or registered by the Texas  
22 Board of Architectural Examiners.

23        (f) If the advisory committee issues an advisory opinion to  
24 the board or the Texas Board of Architectural Examiners on a matter,  
25 that agency shall notify the committee of the final action taken  
26 with regard to the matter. The advisory committee shall consider  
27 the action taken by the agency on the matter in any advisory opinion

1 subsequently issued by the committee on a related matter.

2 (g) The board and the Texas Board of Architectural Examiners  
3 shall enter into a memorandum of understanding regarding the  
4 advisory committee that includes the composition and purpose of the  
5 committee.

6 SECTION 19. Section 1001.251, Occupations Code, is amended  
7 by adding Subsection (c) to read as follows:

8 (c) The board shall maintain on the board's Internet  
9 website:

10 (1) information regarding the procedure for filing a  
11 complaint with the board; and

12 (2) a form that a person may use to file a complaint  
13 with the board.

14 SECTION 20. Sections 1001.252 and 1001.253, Occupations  
15 Code, are amended to read as follows:

16 Sec. 1001.252. GENERAL RULES REGARDING COMPLAINT  
17 INVESTIGATION AND DISPOSITION [~~COMPLAINTS~~]. (a) The board shall  
18 adopt rules that permit the board to receive and investigate a  
19 confidential complaint against a license holder or other person who  
20 may have violated this chapter. The board shall maintain the  
21 confidentiality of the complaint during the investigation.

22 (b) The board by rule shall specify:

23 (1) the manner by which a person may contact the board  
24 for assistance in filing a complaint;

25 (2) the place at which a complaint must be filed;

26 (3) the proper form of a complaint; and

27 (4) the information that must be included in a

1 complaint.

2 (c) The board's procedures must permit a member of the  
3 public who desires to file a complaint to:

4 (1) speak to an investigator on the staff of the board  
5 if the person desires to do so; or

6 (2) easily and conveniently access the board's  
7 complaint process without being required to speak to an  
8 investigator on the staff of the board if the person does not desire  
9 to speak to an investigator.

10 (d) The board shall consider any written grievance against a  
11 license holder or other person filed with the board as a complaint.

12 (e) A complaint must include information sufficient for the  
13 board to determine whether it has the authority to resolve the  
14 complaint. A complaint that contains sufficient information for  
15 the board to commence an investigation is not required to include  
16 all of the information necessary for the board to determine the  
17 validity of the complaint.

18 (f) On receipt of a complaint, the board shall determine  
19 whether the board has the authority to resolve the complaint. If  
20 the board does not have the authority to resolve the complaint, the  
21 board shall dismiss the complaint. If the board has the authority  
22 to resolve the complaint, the board shall initiate a disciplinary  
23 proceeding against the person who is the subject of the complaint.

24 (g) The board by rule shall prescribe a method for  
25 prioritizing complaints for purposes of complaint investigation.  
26 In establishing priorities:

27 (1) a complaint that alleges an action that could

1 potentially harm the public takes precedence over a complaint that  
2 does not allege an action that could potentially harm the public;  
3 and

4 (2) with regard to complaints that do not allege an  
5 action that could potentially harm the public, a complaint filed by  
6 a member of the public takes precedence over a complaint filed by  
7 the staff of the board.

8 (h) The board's staff is responsible for conducting all  
9 phases of complaint investigation, including gathering evidence  
10 necessary to determine the validity of the complaint.

11 (i) The board may employ or contract with advisors,  
12 consultants, engineers, or other persons to provide technical  
13 assistance in investigations and disciplinary proceedings. Except  
14 for an action involving fraud, conspiracy, or malice, a person  
15 whose services are obtained by the board under this subsection is  
16 immune from civil liability and may not be subjected to a suit for  
17 damages for any investigation, report, recommendation, statement,  
18 evaluation, finding made, or other action taken in the course of  
19 performing the person's official duties.

20 (j) The board's staff shall regularly report to the board on  
21 each complaint dismissed by board staff, including:

22 (1) the name of the complainant;

23 (2) the name of the person who is the subject of the  
24 complaint;

25 (3) the basis of the complaint; and

26 (4) the reason for the dismissal of the complaint.

27 (k) Except as provided by Subsection (l), a complaint filed

1 with the board is public information.

2 (1) For any frivolous complaint, the license holder's name  
3 and other personal information on the complaint is not public  
4 information and must be redacted.

5 (m) In this section, "frivolous complaint" means a  
6 complaint that the executive director and investigator, with board  
7 approval, determined:

8 (1) was made for the purpose of harassment; and

9 (2) does not demonstrate harm to any person.

10 Sec. 1001.253. COMPLAINT INFORMATION. (a) The board  
11 shall:

12 (1) assign a number to each complaint filed with the  
13 board; and

14 (2) ensure that each phase of the processing of a  
15 complaint is appropriately documented.

16 (b) The board shall maintain a [keep an information] file on  
17 [about] each written complaint [relating to a license holder] filed  
18 with the board. The file must include:

19 (1) the name of the person who filed the complaint;

20 (2) the date the complaint is received by the board;

21 (3) the subject matter of the complaint;

22 (4) the name of each person contacted in relation to  
23 the complaint;

24 (5) a summary of the results of the review or  
25 investigation of the complaint; and

26 (6) an explanation of the reason the file was closed,  
27 if the board closed the file without taking action other than to

1 investigate the complaint.

2 (c) The board shall provide to the person filing the  
3 complaint and to each person who is a subject of the complaint a  
4 copy of the board's policies and procedures relating to complaint  
5 investigation and resolution.

6 (d) The [(b) If a written complaint relating to a license  
7 holder is filed with the board, the] board, at least quarterly and  
8 until final disposition of the complaint, shall notify the parties  
9 to the complaint of the status of the complaint unless the notice  
10 would jeopardize an undercover investigation.

11 SECTION 21. Subchapter F, Chapter 1001, Occupations Code,  
12 is amended by adding Sections 1001.254 and 1001.255 to read as  
13 follows:

14 Sec. 1001.254. STATISTICAL ANALYSIS OF COMPLAINTS.

15 (a) The board shall develop and maintain a complaint tracking  
16 system to monitor the processing of complaints filed with the  
17 board.

18 (b) The board shall include with the board's annual  
19 financial report under Section 2101.011, Government Code, a  
20 statistical analysis of the complaints filed with the board during  
21 the preceding year, including:

22 (1) the number of complaints filed;

23 (2) a categorization of complaints filed according to  
24 the basis of the complaint and the number of complaints in each  
25 category;

26 (3) the number of complaints filed by board staff;

27 (4) the number of complaints filed by persons other

1 than board staff;

2 (5) the average length of time required to resolve a  
3 complaint;

4 (6) the number of complaints resolved and the manner  
5 in which they were resolved, including:

6 (A) the number of complaints dismissed and the  
7 reasons for dismissal; and

8 (B) the number of complaints resulting in  
9 disciplinary action, the disciplinary action taken, and whether the  
10 disciplinary action taken was imposed by stipulation, agreed  
11 settlement, consent order, default, or order following a contested  
12 case hearing; and

13 (7) the number of complaints filed that are  
14 unresolved, the number of those complaints filed by board staff,  
15 the number of those complaints filed by persons other than board  
16 staff, and the average length of time that the unresolved  
17 complaints have been on file.

18 Sec. 1001.255. PUBLIC PARTICIPATION. The board shall  
19 develop and implement policies that provide the public with a  
20 reasonable opportunity to appear before the board and to speak on  
21 any issue under the jurisdiction of the board.

22 SECTION 22. Section 1001.301, Occupations Code, is amended  
23 by amending Subsections (b) and (c) and adding Subsections (f) and  
24 (g) to read as follows:

25 (b) Except as provided by Subsection (f), a [A] person may  
26 not, unless the person holds a license issued under this chapter,  
27 directly or indirectly use or cause to be used as a professional,



business, or commercial identification, title, name, representation, claim, asset, or means of advantage or benefit any of, or a variation or abbreviation of, the following terms:

- (1) "engineer";
- (2) "professional engineer";
- (3) "licensed engineer";
- (4) "registered engineer";
- (5) "registered professional engineer";
- (6) "licensed professional engineer"; or
- (7) "engineered."

(c) Except as provided by Subsection (f), a [A] person may not directly or indirectly use or cause to be used an abbreviation, word, symbol, slogan, or sign that tends or is likely to create an impression with the public that the person is qualified or authorized to engage in the practice of engineering unless the person holds a license and is practicing under this chapter.

(f) Notwithstanding the other provisions of this chapter, a regular employee of a business entity who is engaged in engineering activities but is exempt from the licensing requirements of this chapter under Sections 1001.057 or 1001.058 is not prohibited from using the term "engineer" on a business card, cover letter, or other form of correspondence that is made available to the public if the person does not:

- (1) offer to the public to perform engineering services; or
- (2) use the title in any context outside the scope of the exemption in a manner that represents an ability or willingness

1 to perform engineering services or make an engineering judgment  
2 requiring a licensed professional engineer.

3 (g) Subsection (f) does not authorize a person to use a term  
4 listed in Subsections (b)(2)-(6) or a variation or abbreviation of  
5 one of those terms.

6 SECTION 23. Section 1001.303, Occupations Code, is amended  
7 to read as follows:

8 Sec. 1001.303. APPLICATION FOR LICENSE. (a) An applicant  
9 for a license under this chapter must submit an [~~a sworn~~]  
10 application on a form prescribed and provided by the board.

11 (b) The application must contain:

12 (1) personal information about the applicant, as  
13 required by board rule;

14 (2) a description of the applicant's education;

15 (3) a detailed summary of the applicant's actual  
16 engineering work;

17 (4) a description of any engineering license or  
18 registration previously issued to the applicant and any denial,  
19 revocation, or suspension of an engineering license or registration  
20 held by the applicant;

21 (5) a description of any criminal offense of which the  
22 applicant has been convicted; and

23 (6) at least three [~~five~~] references from engineers  
24 [~~individuals~~] having personal knowledge of the applicant's  
25 character, reputation, [~~and~~] general suitability for a license, and  
26 [~~of whom at least three must be engineers having personal knowledge~~  
27 ~~of the applicant's~~] engineering experience.

SECTION 24. Section 1001.304, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) The board by rule shall ensure that the examination is administered to applicants with disabilities in compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.), and its subsequent amendments.

SECTION 25. Sections 1001.306, 1001.310, and 1001.311, Occupations Code, are amended to read as follows:

Sec. 1001.306. EXAMINATION RESULTS. (a) Not later than the 30th day after the date a person takes a licensing examination under this chapter, the ~~[The]~~ board shall notify the person ~~[each examinee]~~ of the results of the ~~[an]~~ examination ~~[not later than the 30th day after the date the examination is administered]~~.

(a-1) If the ~~[an]~~ examination is graded or reviewed by a ~~[national]~~ testing service:

(1)[r] the board shall notify the person ~~[each examinee]~~ of the results of the examination not later than the 14th day after the date the board receives the results from the testing service; and

(2) if[r]

~~[(b) If the]~~ notice of the examination results ~~[of an examination]~~ will be delayed for longer than 90 days after the examination date, the board shall notify the person ~~[each examinee]~~ of the reason for the delay before the 90th day.

(b) The board may require a testing service to notify a person of the results of the person's examination.

(c) If requested in writing by a person who fails a

1 licensing [the] examination administered under this chapter, the  
2 board shall furnish [provide to] the person with an analysis of the  
3 person's performance on the examination.

4 Sec. 1001.310. TEMPORARY OR PROVISIONAL LICENSE. (a) The  
5 board by rule may adopt standards and procedures for issuing a  
6 temporary or provisional license under this chapter.

7 (b) The board may issue a provisional license to an  
8 applicant currently licensed in another jurisdiction who seeks a  
9 license in this state and who:

10 (1) has been licensed in good standing as an engineer  
11 for at least two years in another jurisdiction, including a foreign  
12 country, that has licensing requirements substantially equivalent  
13 to the requirements of this chapter;

14 (2) has passed a national or other examination  
15 recognized by the board relating to the practice of engineering;  
16 and

17 (3) is sponsored by a person licensed by the board  
18 under this chapter with whom the provisional license holder will  
19 practice during the time the person holds a provisional license.

20 (c) The board may waive the requirement of Subsection (b)(3)  
21 for an applicant if the board determines that compliance with that  
22 subsection would be a hardship to the applicant.

23 (d) A provisional license is valid until the date the board  
24 approves or denies the provisional license holder's application for  
25 a license. The board shall issue a license under this chapter to  
26 the provisional license holder if:

27 (1) the provisional license holder is eligible to be

1 licensed under Section 1001.311(b); or

2 (2) the provisional license holder meets the following  
3 requirements:

4 (A) the provisional license holder passes an  
5 examination that tests the provisional license holder's knowledge  
6 and understanding of the laws and rules relating to the practice of  
7 engineering in this state;

8 (B) the board verifies that the provisional  
9 license holder meets the academic and experience requirements for a  
10 license under this chapter; and

11 (C) the provisional license holder satisfies any  
12 other licensing requirements under this chapter.

13 (e) The board must approve or deny a provisional license  
14 holder's application for a license not later than the 180th day  
15 after the date the provisional license is issued. The board may  
16 extend the 180-day period if the results of an examination have not  
17 been received by the board before the end of that period.

18 (f) The board may establish a fee for provisional licenses  
19 in an amount reasonable and necessary to cover the cost of issuing  
20 the license.

21 Sec. 1001.311. APPLICATION BY NONRESIDENT. (a) A person  
22 who holds a license or certificate of registration issued by  
23 another state or a foreign country may apply for a license in this  
24 state.

25 (b) The board may waive any prerequisite to obtaining a  
26 license for an applicant after reviewing the applicant's  
27 credentials and determining that the applicant holds a license

1 issued by another jurisdiction that has licensing requirements  
2 substantially equivalent to those of this state.

3 SECTION 26. Subsection (b), Section 1001.351, Occupations  
4 Code, is amended to read as follows:

5 (b) The board by rule may adopt a system under which  
6 licenses and registrations expire on various dates during the year.  
7 For the year in which the license or registration expiration date is  
8 changed, the board shall prorate license or registration fees on a  
9 monthly basis so that each license or registration holder pays only  
10 that portion of the license or registration fee that is allocable to  
11 the number of months during which the license or registration is  
12 valid. On renewal of the license or registration on the new  
13 expiration date, the total license or registration renewal fee is  
14 payable ~~[and shall adjust renewal dates accordingly]~~.

15 SECTION 27. Sections 1001.352 and 1001.353, Occupations  
16 Code, are amended to read as follows:

17 Sec. 1001.352. NOTICE OF LICENSE EXPIRATION. Not later  
18 than the 30th day ~~[one month]~~ before the ~~[expiration]~~ date ~~[of]~~ a  
19 person's license is scheduled to expire, the board shall send ~~[mail~~  
20 ~~to the person at the last address the person provided to the board]~~  
21 written notice of the impending ~~[license]~~ expiration to the person  
22 at the person's last known address according to the records of the  
23 board ~~[date and the amount of the annual renewal fee for the~~  
24 ~~license]~~.

25 Sec. 1001.353. PROCEDURE FOR RENEWAL. (a) A person who is  
26 otherwise eligible to renew a license may renew an unexpired  
27 license by paying the required renewal fee to the board before the

1 expiration date of the license. A person whose license has expired  
 2 may not engage in activities that require a license until the  
 3 license has been renewed.

4 (b) A person whose license has been expired for 90 days or  
 5 less may renew the license by paying to the board a renewal fee that  
 6 is equal to 1-1/2 times the normally [the] required renewal fee and  
 7 any applicable increase in fees as required by Section 1001.206 [a  
 8 penalty fee set by the board].

9 (c) A person whose license has been expired for more than 90  
 10 days but less than two years may renew the license by paying to the  
 11 board a renewal fee that is equal to two times the normally required  
 12 renewal fee and any applicable increase in fees as required by  
 13 Section 1001.206 for each delinquent year or part of a year [all  
 14 unpaid renewal fees and a penalty fee set by the board].

15 (d) A person whose license has been expired for two years or  
 16 more may not renew the license. The person may obtain a new license  
 17 by complying with the requirements and procedures, including the  
 18 examination requirements, for obtaining an original license [~~that~~  
 19 ~~are in effect at the time the person applies].~~

20 SECTION 28. Subchapter H, Chapter 1001, Occupations Code,  
 21 is amended by adding Sections 1001.354 and 1001.355 to read as  
 22 follows:

23 Sec. 1001.354. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE  
 24 PRACTITIONER. (a) A person who was licensed in this state, moved  
 25 to another state, and is currently licensed and has been in practice  
 26 in the other state for the two years preceding the date of  
 27 application may obtain a new license without reexamination.

1        (b) The person must pay to the board a fee that is equal to  
2        two times the normally required renewal fee for the license.

3        Sec. 1001.355. INACTIVE STATUS. (a) An engineer may  
4        request inactive status at any time before the expiration date of  
5        the person's license. A license holder on inactive status may not  
6        practice engineering.

7        (b) A license holder on inactive status must pay an annual  
8        fee set by the board.

9        (c) A license holder on inactive status is not required to:  
10       (1) comply with the continuing education requirements  
11       adopted by the board; or

12       (2) take an examination for reinstatement to active  
13       status.

14       (d) To return to active status, a license holder on inactive  
15       status must:

16       (1) file with the board a written notice requesting  
17       reinstatement to active status;

18       (2) pay the fee for the annual renewal of the license  
19       and the fee increase required by Section 1001.206; and

20       (3) provide evidence satisfactory to the board that  
21       the person has complied with the continuing education requirements  
22       adopted by the board.

23       SECTION 29. Section 1001.405, Occupations Code, is amended  
24       by adding Subsection (g) to read as follows:

25       (g) Notwithstanding the other provisions of this section,  
26       the board by rule may provide that a business entity that has not  
27       previously registered with the board and that is engaged in the



1 practice of engineering in violation of Subsection (b) is not  
2 subject to disciplinary action for the violation if the business  
3 entity registers with the board not later than the 30th day after  
4 the date the board gives written notice to the business entity of  
5 the registration requirement. This subsection does not apply to a  
6 business entity whose registration has expired.

7 SECTION 30. Section 1001.406, Occupations Code, is amended  
8 to read as follows:

9 Sec. 1001.406. GRADUATE ENGINEERS. (a) A graduate of a  
10 [~~public~~] university recognized by the American Association of  
11 Colleges and Universities who has a degree from an engineering  
12 program accredited by the Accreditation Board for Engineering and  
13 Technology (ABET) has the right to:

14 (1) disclose any college degree received by the  
15 person; and

16 (2) use the term "graduate engineer" on the person's  
17 stationery or business cards or in personal communications of any  
18 character.

19 (b) A graduate engineer who is employed in a firm registered  
20 under this chapter and who is working under the direct supervision  
21 of a licensed professional engineer may use the term "engineer" on  
22 the person's stationery or business cards or in personal  
23 communications of any character.

24 SECTION 31. Subchapter J, Chapter 1001, Occupations Code,  
25 is amended by adding Sections 1001.4525, 1001.4526, and 1001.4527  
26 to read as follows:

27 Sec. 1001.4525. PROBATION. (a) If a person's license

1 suspension is probated, the board may require the person to:

2 (1) report regularly to the board on matters that are  
3 the basis of the probation;

4 (2) limit practice to the areas prescribed by the  
5 board; or

6 (3) continue or review professional education until  
7 the person attains a degree of skill satisfactory to the board in  
8 those areas that are the basis of the probation.

9 (b) The board by rule shall adopt written guidelines to  
10 ensure that probation is administered consistently.

11 Sec. 1001.4526. RESTITUTION. (a) Subject to Subsection  
12 (b), the board may order a person licensed or registered under this  
13 chapter to pay restitution to a consumer as provided in an agreement  
14 resulting from an informal settlement conference instead of or in  
15 addition to imposing an administrative penalty under this chapter.

16 (b) The amount of restitution ordered as provided in an  
17 agreement resulting from an informal settlement conference may not  
18 exceed the amount the consumer paid to the person for a service  
19 regulated by this chapter. The board may not require payment of  
20 other damages or estimate harm in a restitution order.

21 Sec. 1001.4527. RECUSAL OF BOARD MEMBER. (a) A board  
22 member who participated in the investigation of a complaint or in  
23 informal settlement negotiations regarding the complaint:

24 (1) may not participate in the discussion of or vote on  
25 the matter at a board meeting related to the complaint; and

26 (2) shall state at the meeting why the member is  
27 prohibited from participating in the discussion of or voting on the

1 matter.

2 (b) A statement under Subsection (a)(2) shall be entered  
3 into the minutes of the meeting.

4 SECTION 32. Chapter 1001, Occupations Code, is amended by  
5 adding Subchapter M to read as follows:

6 SUBCHAPTER M. ADVISORY OPINIONS

7 Sec. 1001.601. BOARD ADVISORY OPINIONS. (a) On its own  
8 initiative or at the request of any interested person, the board  
9 shall prepare a written advisory opinion about an interpretation of  
10 this chapter or the application of this chapter to a person in  
11 regard to a specified existing or hypothetical factual situation.  
12 The board shall respond to requests for opinions within 180 days or  
13 affirmatively state its reason for not responding to the request.

14 Sec. 1001.602. MAINTENANCE OF OPINIONS; SUMMARY. The board  
15 shall:

16 (1) number and classify each advisory opinion issued  
17 under this subchapter; and

18 (2) annually compile a summary of the opinions in a  
19 single reference document that is available on the Internet.

20 Sec. 1001.603. ATTORNEY GENERAL'S OPINIONS. The authority  
21 of the board to issue an advisory opinion under this subchapter does  
22 not affect the authority of the attorney general to issue an opinion  
23 as authorized by law.

24 Sec. 1001.604. RELIANCE ON ADVISORY OPINION. It is a  
25 defense to prosecution or to imposition of a civil penalty that a  
26 person reasonably relied on a written advisory opinion of the board  
27 relating to:

1           (1) the provision of the law the person is alleged to  
2   have violated; or

3           (2) a fact situation that is substantially similar to  
4   the fact situation in which the person is involved.

5           SECTION 33. (a) Not later than January 1, 2004, the Texas  
6   Board of Professional Engineers shall adopt the rules required by  
7   Section 1001.2035, Occupations Code, as added by this Act.

8           (b) Not later than September 1, 2005, the Texas Board of  
9   Professional Engineers shall adopt the written guidelines required  
10   by Section 1001.4525, Occupations Code, as added by this Act.

11          (c) The Texas Board of Professional Engineers is not  
12   required to issue an advisory opinion under Subchapter M, Chapter  
13   1001, Occupations Code, as added by this Act, before January 1,  
14   2004.

15          SECTION 34. (a) This Act takes effect September 1, 2003.

16          (b) The changes in law made by Sections 1001.102 and  
17   1001.103, Occupations Code, as amended by this Act, and Section  
18   1001.112, Occupations Code, as added by this Act, in the  
19   prohibitions on or qualifications of members of the Texas Board of  
20   Professional Engineers do not affect the entitlement of a member  
21   serving on the Texas Board of Professional Engineers immediately  
22   before September 1, 2003, to continue to serve and function as a  
23   member of the Texas Board of Professional Engineers for the  
24   remainder of the member's term. Those changes in law apply only to  
25   a member appointed on or after September 1, 2003.

26          (c) The change in law made by Section 1001.108, Occupations  
27   Code, as amended by this Act, does not affect the entitlement of a

1 person who was serving as presiding officer of the Texas Board of  
2 Professional Engineers immediately before September 1, 2003, to  
3 continue to serve and function in that capacity for the remainder of  
4 the person's term as presiding officer. That change in law applies  
5 only to the designation of a presiding officer of the board after  
6 that person's term as presiding officer expires.

7 (d) The changes in law made by this Act to Chapter 1001,  
8 Occupations Code, relating to the investigation of a complaint  
9 apply only to a complaint filed with the Texas Board of Professional  
10 Engineers on or after the effective date of this Act. A complaint  
11 filed with the board before the effective date of this Act is  
12 governed by the law as it existed immediately before that date, and  
13 the former law is continued in effect for that purpose.

**SB 277 by Ellis (Chisum)**  
**Conference Committee Report**  
**Section-by-Section Analysis**  
**May 30, 2003**

**SENATE VERSION**

No equivalent provision.

SECTION 1. Amends Sections 1001.005 and 1001.051, Occupations Code.

Section 1001.005: Updates the Texas Board of Professional Engineers's Sunset date to September 1, 2015.

Section 1001.051: Specifies that an exemption under this chapter applies only to a person who does not offer to perform engineering services to the public.

No equivalent provision.

SECTION 2. Amends Section 1001.057, Occupations Code, to clarify the existing exemption for private corporations and their full-time employees from engineering licensing requirements.

SECTION 3. Amends Section 1001.058(b) and (c), Occupations Code, to remove provisions that specify that a person claiming an exemption may not use the title "engineer," and to provide that a person who claims an exemption and is found to have offered engineering services to the public may not claim an exemption for 10 years.

**HOUSE VERSION**

SECTION \_\_. Amends Section 1001.004, Occupations Code, to subject persons providing expert witness testimony to the board's disciplinary authority. (Second-reading amendment #6 by Solomons)

SECTION 1. Same as Senate version.

SECTION \_\_. Amends Section 1001.053, Occupations Code, to increase from \$8,000 to \$20,000 the contemplated expense of a completed public works project that involves structural, electrical, or mechanical engineering that require a professional engineer. (Third-reading amendment #3 by Chisum)

SECTION 2. Same as Senate version.

SECTION 3. Same as Senate version.

**CONFERENCE**

SECTION 1. Same as House version.

SECTION 2. Same as Senate version.

Same as Senate version.

SECTION 3. Same as Senate version.

SECTION 4. Same as Senate version.

**SB 277 by Ellis (Chisum)**  
**Conference Committee Report**  
**Section-by-Section Analysis**  
**May 30, 2003**

**SENATE VERSION**

No equivalent provision.

SECTION 4. Amends Section 1001.101(b), Occupations Code, to update current statutory language requiring impartial appointments to the board.

SECTION 5. Amends Section 1001.102(a), Occupations Code, to update current statutory language requiring one-third of board members to be public members without financial ties to the agency or regulated industry.

SECTION 6. Amends Section 1001.103, Occupations Code, to update current statutory language prohibiting board members, high-level employees, and spouses from serving as an officer or employee of a related Texas trade association.

SECTION 7. Amends Section 1001.106, Occupations Code, to update current statutory language specifying the grounds for removing a board member.

SECTION 8. Amends Section 1001.108, Occupations Code, to update current statutory language requiring the Governor to designate the board's presiding officer.

SECTION 9. Amends Subchapter C, Chapter 1001, Occupations Code, by adding Section 1001.112 to require members of the board to complete training before assuming their duties.

**HOUSE VERSION**

SECTION \_\_. Adds Section 1001.065, Occupations Code, to exempt certain NASA-related activities from the requirements of the Engineering Practice Act, and allow employees working in those activities to use the term "engineer" or "engineering" in a job title. (Second-reading amendment #7 by Smith of Harris)

SECTION 4. Same as Senate version.

SECTION 5. Same as Senate version.

SECTION 6. Same as Senate version.

SECTION 7. Same as Senate version.

SECTION 8. Same as Senate version.

SECTION 9. Same as Senate version.

**CONFERENCE**

SECTION 5. Same as House version, except corrects citation as Section 1001.066, Occupations Code.

SECTION 6. Same as Senate version.

SECTION 7. Same as Senate version.

SECTION 8. Same as Senate version.

SECTION 9. Same as Senate version.

SECTION 10. Same as Senate version.

SECTION 11. Same as Senate version.

**SB 277 by Ellis (Chisum)**  
**Conference Committee Report**  
**Section-by-Section Analysis**  
**May 30, 2003**

**SENATE VERSION**

**SECTION 10.** Amends Subchapter D, Chapter 1001, by adding Sections 1001.153, 1001.154, 1001.155 and 1001.156.

Section 1001.153: Requires the board to separate its policymaking duties from the agency's management functions.

Section 1001.154: Requires the executive director or executive director's designee to inform board members and employees of qualifications and responsibilities for office.

Section 1001.155: Requires the board to prepare and maintain a current equal employment opportunity policy.

Section 1001.156: Requires the executive director to inform employees about the State Employee Incentive Program.

**SECTION 11.** Amends Section 1001.203, Occupations Code, to update current statutory language requiring the board to adopt rules for compliance with the Professional Services Procurement Act, but otherwise prohibiting the board from adopting rules that restrict competitive bidding or advertising except to prohibit false, misleading, or deceptive practices.

**SECTION 12.** Amends Subchapter E, Chapter 1001, Occupations Code, to add Section 1001.2035 requiring the board to adopt rules necessary to comply with Chapter 53, Occupations Code, regarding criminal convictions.

**SECTION 13.** Amends Section 1001.204(a), Occupations Code, to require the board to set fees in amounts reasonable and necessary to cover the costs of administering chapter 1001.

**HOUSE VERSION**

**SECTION 10.** Same as Senate version.

**SECTION 11.** Same as Senate version.

**SECTION 12.** Same as Senate version.

**SECTION 13.** Same as Senate version, but also authorizes the board to establish a fee for an inactive status license. (Second-reading amendment #4 by Smith of Harris)

**CONFERENCE**

**SECTION 12.** Same as Senate version.

**SECTION 13.** Same as Senate version.

**SECTION 14.** Same as Senate version.

**SECTION 15.** Same as House version.



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**SENATE VERSION**

No equivalent provision.

**SECTION 14.** Amends Section 1001.210, Occupations Code, to require the board to develop continuing education programs for licensees, allowing licensees to certify that they have complied with continuing education requirements at the time of license renewal.

**SECTION 15.** Amends Subchapter E, Chapter 1001, Occupations Code, by adding Sections 1001.214-1001.216.

Section 1001.214: Requires the board to make effective use of technology in its delivery of services and provision of public information.

Section 1001.215: Requires the board to develop a policy that encourages the use of negotiated rulemaking and alternative dispute resolution.

Section 1001.216: Requires the board to form a joint committee with the Board of Architectural Examiners, consisting of three members from each board, to work to resolve issues resulting from the overlap of activities under the jurisdiction of each board.

**SECTION 16.** Amends Section 1001.251, Occupations Code, to add Subsection (c) requiring the board to maintain on its Web site information about the procedure for filing a complaint and a form that may be used to file a complaint with the board.

**HOUSE VERSION**

**SECTION \_\_.** Amends Section 1001.206(c) to exempt a license holder on inactive status from paying the \$200 professional fee. (Second-reading amendment #4 by Smith of Harris)

**SECTION 14.** Same as Senate version.

**SECTION 15.** Same as Senate version, but also increases the number of joint committee members from six to eight, by requiring the board to appoint an architectural engineer in addition to three board members to the joint committee, and requiring the Board of Architectural Examiners to appoint a practicing architect in addition to three board members to the committee. (Third-reading amendment #4 by Callegari)

Same as Senate version.

**CONFERENCE**

**SECTION 16.** Same as House version.

**SECTION 17.** Same as Senate version.

**SECTION 18.** Same as House version, but also clarifies that the terms of one or two members of the committee appointed by the board, and one or two members appointed by the Texas Board of Architectural Examiners expire each odd-numbered year.

**SECTION 19.** Same as Senate version.

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**SECTION 17.** Amends Sections 1001.252 and 1001.253, Occupations Code.

Section 1001.252: Requires the board to adopt rules for filing complaints; to prioritize complaints and focus on those that could harm the public; to clarify staff's responsibility for investigating complaints, including gathering evidence; to provide a mechanism for the board to receive technical assistance on enforcement cases; and to require board staff to regularly report complaints dismissed by staff to the board.

Section 1001.252: Requires the board to assign a number to each complaint filed with the board and maintain documentation on complaint files. Updates standard Sunset language requiring the board to maintain information on written complaints and notify the parties about policies for and status of complaints.

**SECTION 18.** Amends Subchapter F, Chapter 1001, Occupations Code, to add Sections 1001.254 and 1001.255.

Section 1001.254: Requires the board to track statistics about complaints received and resolved and provide this information in its annual financial report.

Section 1001.255: Requires the board to give the public a reasonable opportunity to present issues under the board's jurisdiction.

**SECTION 19.** Amends Section 1001.301, Occupations Code, by amending Subsections (b) and (c), and adding Subsection (f) to provide that a person who is exempt from the licensing requirements of this chapter is not prohibited from using the term "engineer" or a variation of that term, including on a business card,

**HOUSE VERSION**

Same as Senate version, but also specifies that complaints filed with the Board, including those that are frivolous, are public information. Requires the Board to redact all personal and identifying information about a licensee before releasing information from a frivolous complaint to the public. Defines frivolous as a complaint that was filed to harass a licensee and does not demonstrate anyone has been harmed. Authorizes the executive director and staff investigator to determine if a complaint is frivolous, with final approval of the Board. (Second-reading amendment #1 by Chisum)

Same as Senate version.

**SECTION 19.** Same as Senate version.

**CONFERENCE**

**SECTION 20.** Same as House version.

**SECTION 21.** Same as Senate version.

**SECTION 22.** Same as Senate version.

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cover letter, or other form of correspondence made available to the public as long as that person does not offer to provide engineering services to the public; and prohibits an unlicensed individual from using the terms "professional engineer," "licensed engineer," "registered engineer," "registered professional engineer," or "licensed professional engineer."

SECTION 20. Amends Section 1001.303, Occupations Code, to eliminate the requirement that applications for licensure be notarized, and to change the requirement for applicants for licensure to submit character references.

SECTION 21. Amends Section 1001.304, Occupations Code, to add Subsection (d) requiring the board to adopt rules to ensure that the board's examinations are accessible to persons with disabilities.

SECTION 22. Amends Sections 1001.306, 1001.310, and 1001.311, Occupations Code.

Section 1001.306: Updates current statutory language requiring the board to notify applicants of exam results.

Section 1001.310: Authorizes the board to issue provisional licenses to qualified applicants licensed in other states.

Section 1001.311: Authorizes the board to license applicants with valid licenses from states with similar licensing requirements.

SECTION 23. Amends Section 1001.351, Occupations Code, to update current statutory language authorizing the board to adopt a staggered license renewal system.

**HOUSE VERSION**

SECTION 20. Same as Senate version.

SECTION 21. Same as Senate version.

SECTION 22. Same as Senate version.

SECTION 23. Same as Senate version.

**CONFERENCE**

SECTION 23. Same as Senate version.

SECTION 24. Same as Senate version.

SECTION 25. Same as Senate version.

SECTION 26. Same as Senate version.

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SECTION 24. Amends Sections 1001.352 and 1001.353, Occupations Code, to update current statutory language establishing a method for license renewal and a time-frame and penalty structure for delinquent renewals.

SECTION 25. Amends Subchapter H, Chapter 1001, Occupations Code, to add Section 1001.354 establishing a method for license renewal and a time-frame and penalty structure for delinquent renewals for out-of-state practitioners.

No equivalent provision.

SECTION 26. Amends Section 1001.405, Occupations Code, to add Subsection (g) authorizing the board to adopt rules to establish a 30-day grace period for firms registering with the board for the first time.

SECTION 27. Amends Section 1001.406, Occupations Code, to authorize a graduate engineer who holds a degree from an accredited engineering program and who works under the supervision of a professional engineer in a firm registered by the board to use the title "engineer" on stationery, cards, or in personal communications.

**HOUSE VERSION**

SECTION 24. Same as Senate version, but also requires a licensee who renews a license that has been expired for more than one year to pay any delinquent amounts of the \$200 professional licensing fee. (Second-reading amendment #2 by Chisum)

SECTION 25. Same as Senate version, but also adds Section 1001.355, Occupations Code, authorizing the board to implement an inactive license status. Specifies that an inactive licensee may not practice engineering, does not have to comply with continuing education requirements, and does not have to take an exam for reinstatement to active status. (Second-reading amendment #4 by Smith of Harris)

SECTION \_\_. Amends Section 1001.402, Occupations Code, to require that a public official may only accept a plan, specification, or other document that requires the application of engineering judgment if it is prepared and sealed by a professional engineer. (Second-reading amendment #6 by Solomons)

SECTION 26. Same as Senate version.

SECTION 27. Same as Senate version.

**CONFERENCE**

SECTION 27. Same as House version.

SECTION 28. Same as House version.

Same as Senate version.

SECTION 29. Same as Senate version.

SECTION 30. Same as Senate version.

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**SECTION 28.** Amends Subchapter J, Chapter 1001, Occupations Code, to add Sections 1001.4525-1001.4527.

Section 1001.4525: Updates current statutory language authorizing the board to use a full range of penalties, including probating a license suspension, for violations of this chapter or board rules.

Section 1001.4526: Authorizes the board to order restitution be paid to a consumer as part of an agreement in an informal settlement conference.

Section 1001.4527: Requires board members to recuse themselves from voting on disciplinary actions in cases in which they participated in investigations or informal hearings.

No equivalent provision.

**HOUSE VERSION**

**SECTION 28.** Same as Senate version.

**SECTION\_\_.** Adds Subchapter M, Occupations Code.

Section 1001.601: Requires the board to prepare and maintain advisory opinions about the interpretation or application of the Engineering Practice Act to a person in regard to a specified or hypothetical situation.

Section 1001.603: Requires the board to annually compile a summary of the advisory opinions in a single document available on the Internet.

Section 1001.604: Clarifies that the board's authority to issue an advisory opinion does not conflict with the Attorney General's.

Section 1001.605: Specifies that it is a defense to prosecution or imposition of a civil penalty if an individual relies on an advisory opinion from the board.

(Second-reading amendment #6 by Solomons)

**CONFERENCE**

**SECTION 31.** Same as Senate version.

**SECTION 32.** Same as House version, except corrects citation numbering.

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<b>SENATE VERSION</b>	<b>HOUSE VERSION</b>	<b>CONFERENCE</b>
No equivalent provision.	SECTION __. Specifies that the board does not have to issue an advisory opinion before January 1, 2004. (Second-reading amendment #6 by Solomons)	Same as House version. (Incorporated into SECTION 33.)
No equivalent provision.	SECTION __. Amends Section 2, Article 8930, Revised Statutes, to specify that the board shall be the only state agency that is part of the Self-Directed, Semi-Independent Licensing Agency Pilot Project, and to remove the Board of Public Accountancy and the Board of Architectural Examiners from the pilot project. (Third-reading amendment #5 by Chisum)	Same as Senate version.
No equivalent provision.	SECTION __. Amends Section 4(c), Article 8930, Revised Statutes, to extend the Self-Directed, Semi-Independent Licensing Agency Pilot Project to 2009. (Third-reading amendment #5 by Chisum)	Same as Senate version.
No equivalent provision.	SECTION __. Amends Section 6(c), Article 8930, Revised Statutes, to increase the amount the board must remit to the General Revenue Fund from \$50,000 to \$373,900 annually, and to remove the Board of Public Accountancy and the Board of Architectural Examiners and the amounts those agencies must remit from the pilot project. (Third-reading amendment #5 by Chisum)	Same as Senate version.
No equivalent provision.	SECTION __. Amends Section 15(b), Article 8930, Revised Statutes, to specify that if a state agency no longer has status as a pilot project agency, that agency's unobligated money shall be transferred to the State. (Third-reading amendment #5 by Chisum)	Same as Senate version.
SECTION 29. Requires the board to adopt rules necessary to comply with statutory provisions regarding criminal convictions by January 1, 2004. Requires the board to adopt guidelines for probating a license suspension by September 1, 2005.	SECTION 29. Same as Senate version.	SECTION 33. Same as Senate version, but also specifies that the board is not required to issue engineering advisory opinions before January 1, 2004.

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**HOUSE VERSION**

**CONFERENCE**

No equivalent provision.

SECTION \_\_. Provides that on Sept. 1, 2003, the Board of Public Accountancy and the Board of Architectural Examiners are no longer under the pilot project. Specifies that any change in law does not affect those two boards' obligation to remit money to the General Revenue Fund for FY 2003. (Third-reading amendment #5 by Chisum)

Same as Senate version.

SECTION 30. Sets the effective date of this Act as September 1, 2003. Makes the application of the changes in law made by this Act by Sections 1001.102, 1001.103, 1001.108, and 1001.112, Occupations Code, in the prohibitions on or qualifications of members of the board prospective. Makes the change in law made by this Act to Chapter 1001, Occupations Code, relating to the investigation of a complaint prospective.

SECTION 30. Same as Senate version.

SECTION 34. Same as Senate version.

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 78TH LEGISLATIVE REGULAR SESSION**

**May 30, 2003**

**TO:** Honorable David Dewhurst , Lieutenant Governor, Senate  
Honorable Tom Craddick, Speaker of the House, House of Representatives

**FROM:** John Keel, Director, Legislative Budget Board

**IN RE: SB277** by Ellis, Rodney (Relating to the continuation and functions of the Texas Board of Professional Engineers and to the regulation of the practice of engineering. ), **Conference Committee Report**

<b>No significant fiscal implication to the State is anticipated.</b>
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The bill would continue the Board of Professional Engineers for another 12 years. The bill would also require the board to form a joint practice committee with the Board of Architectural Examiners, authorize restitution as part of an informal settlement conference, authorize the use of advisors and consultants for technical assistance on enforcement cases and clarify that the terms "engineer" and "engineering" can be used by individuals other than licensed professional engineers who are operating within the scope of their duties for their employer.

It is assumed the agency could implement the provisions of the bill within current resources and would adjust fees to offset any increase or decrease in revenues.

The bill would take effect September 1, 2003.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 460 Board of Professional Engineers, 116 Sunset Advisory Commission, 459 Board of Architectural Examiners

**LBB Staff:** JK, JRO, GO, RT